IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 247

COLUMBUS AND GREENVILLE RAILWAY COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

REPLY TO MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The Memorandum for the Respondent in Opposition states this case involves a question of fact and thus summarily seeks to have the Court deny the writ of certiorari out of hand. The truth is there is no dispute of the basic facts as found by the Tax Court. The question involves the proper legal conclusions to be drawn from the facts as found by the Tax Court.

The Government's Memorandum in Opposition attempts to avoid the basic facts in the case at bar by an assertion that is not supported by the record.

The basic facts are that when the petitioner acquired the railroad property from the receivership in 1923, it acquired the property subject to the Georgia Pacific mortgage of 1882. The bonds under this mortgage were held alive and were a lien upon the railroad property until they were cremated on May 3, 1926, and a release and quitclaim deed was given by the trustee to Southern Railway Company and the petitioner releasing said railroads from any liability under the mortgage.[1] The Government's memorandum throughout states that it was never "expected", "anticipated" or "intended" that the petitioner would pay any part of the 1882 mortgage. This assertion is contrary to the record in the case. The Tax Court made no such finding.[2] The record shows that the railroad property was purchased in 1923. The mortgage lien was not released until 1926. The Tax Court, in its Findings of Fact, set forth some of the correspondence dealing with negotiations that led to the release of the lien of the 1882 mortgage. (R. 48-50) It was not until 1926 that these negotiations took place, and it was only as a result of these negotiations between petitioner and Southern Railway Company that petitioner, for a valuable consideration, was relieved from the payment of its proportionate share of the 1882 mortgage. The fact that the negotiations took place shows that petitioner recognized its obligation under the mortgage and intended to arrive at an agreement

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[1] When Southern paid the bonds it became subrogated to the rights of the bondholders. This is the reason petitioner was required to negotiate with Southern prior to obtaining a release. (R. 48-50)

[2] The Tax Court did express some doubt with respect to this matter in its opinion, but it never made a finding. (R. 63)

about payment of its proportionate share of the mortgage. In view of these negotiations, it cannot be said that at the time the petitioner acquired the property, they did not "expect" or "intend" to pay their proportionate share of the 1882 mortgage.

Respectfully submitted,

ROBERT ASH
CARL F. BAUERSFELD
1921 Eye Street, N.W.,
Washington, D. C. 20006
Attorneys for Petitioner

Of Counsel:

R. C. STOVALL, ESQ.,
Columbus, Mississippi.

July 22, 1966